110-348

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~893.~~ ~~760~~ 288

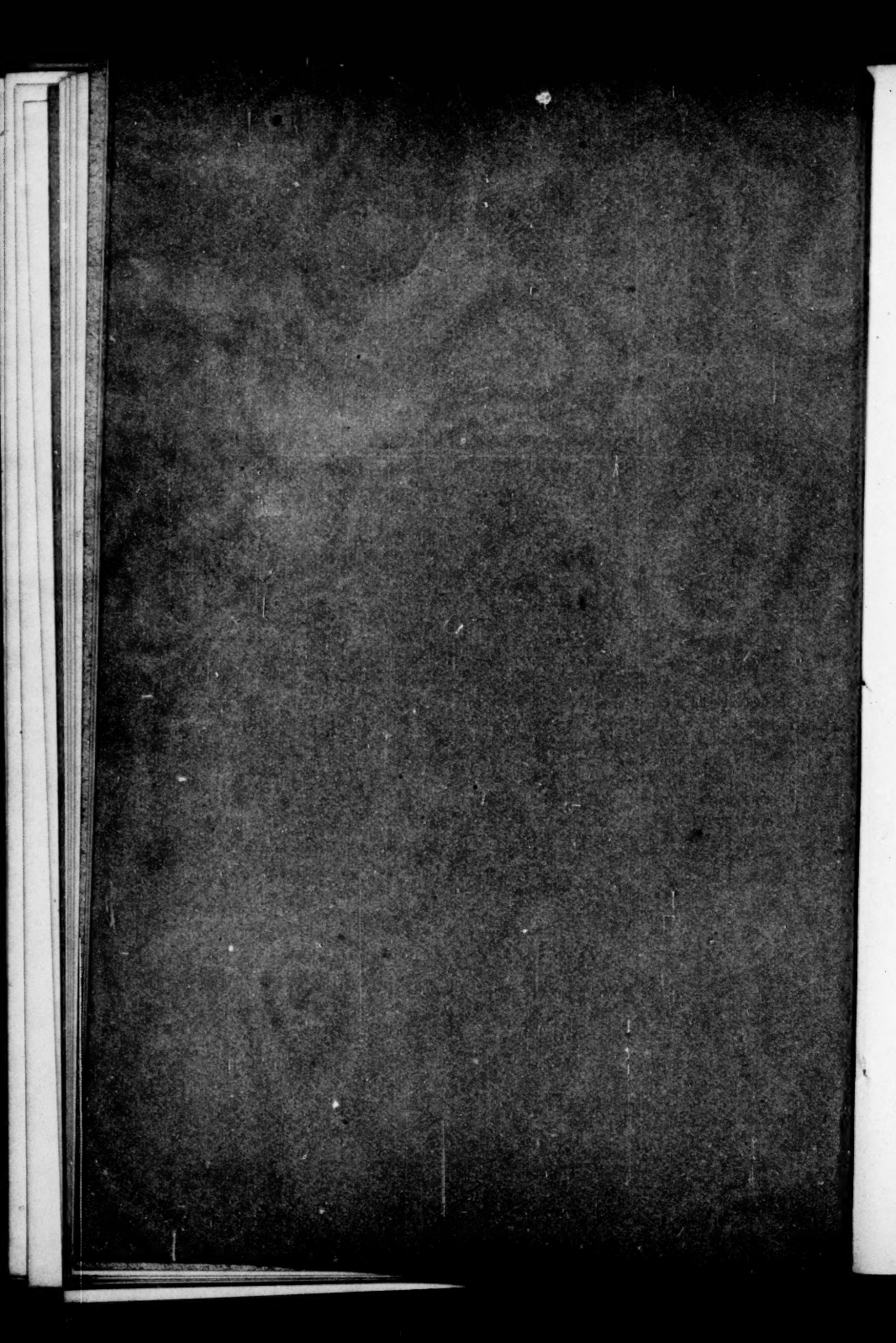
THE SPRING VALLEY WATER WORKS, PLAINTIFF IN ERROR,

vs.

ANTONE SCHOTTLER ET AL., CONSTITUTING THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

FILED SEPTEMBER 9, 1881.



SUPREME COURT OF THE UNITED STATES.

No. 893.

THE SPRING VALLEY WATER WORKS, PLAINTIFF IN ERROR,

vs.

ANTONE SCHOTTLER ET AL., CONSTITUTING THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO.

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1, 2 *Affidavit and petition for writ.*

In the supreme court of the State of California.

SPRING VALLEY WATER WORKS, petitioner,
vs.
ANTONE SCHOTTLER, JOHN MASON, J. M. Litchfield, Samuel Drake, James D. Whitney, Frank Eastman, Hugh Fraser, Chas. L. Taylor, Micah Doane, Chas. A. Bayly, E. N. Torrey, and James B. Stetson, being and constituting the "board of supervisors of the city and county of San Francisco," respondent. } 7629.

CITY AND COUNTY OF SAN FRANCISCO, *ss:*

Charles Webb Howard, being duly sworn, deposes and says:

I. That he is the president of the Spring Valley Water Works, the petitioner in this cause, and makes this affidavit and petition for and on behalf of said petitioner.

II. That said Spring Valley Water Works is a corporation organized and existing under the laws of the State of California, and having its office and principal place of business at the city and county of San Francisco, in said State, and is a party directly interested in and affected by the relief sought in this cause.

III. That said petitioner was organized on the nineteenth day of June, A. D. 1858, under and by virtue of a certain certificate of incorporation, certifying, among other things, that said corporation was formed "under and in conformity with the requirements of an act of the legislature of the State of California entitled 'An act to authorize George H. Ensign and other owners of the Spring Valley Water Works to lay down water-pipes in the public streets of the city and county of San Francisco,' passed April 23, 1858, and by virtue of an act of the legislature aforesaid entitled 'An act for the incorporation of water companies,' passed April 22, 1858, and in conformity with such other laws, or parts of laws, relating to the formation of corporations, as are now in force in said State of California."

Also, that "the objects for which said company is formed is the introduction of pure, fresh water into the city and county of San Francisco, and into any part thereof, from any point or points, place or places, for the purpose of supplying the inhabitants of said city and county with the same, and to do and transact all such business relating thereto as may be necessary and proper; not, however, to be inconsistent with the laws and constitution of the State of California."

Which certificate of incorporation was filed in the office of the county clerk of the city and county of San Francisco, on the said nineteenth day of June, 1858, and a certified copy thereof filed in the office of the secretary of state of the State of California.

IV. That in and by section one of the act of the legislature of the State of California entitled "An act for the incorporation of water companies," passed April 22, 1858, and referred to in said certificate of incorporation, it is provided as follows:

"The provisions of an act entitled 'An act to provide for the formation of corporations for certain purposes,' passed April 14th,
3 1853, and the provisions of 'An act to amend an act entitled "An act

to provide for the formation of corporations for certain purposes," passed April 14th, 1853,' and passed on the 30th day of April, 1855, shall extend to and apply to all corporations already formed or hereafter to be formed under said acts for the purpose of supplying any city and county or any cities or towns in this State, or the inhabitants thereof, with pure, fresh water.

V. That the city and county of San Francisco is, and at all times in this petition mentioned has been, a municipal corporation, organized and existing under the laws of said State, and the board of supervisors thereof, the respondent herein, was and is, and constituted and now constitutes, the municipal council and legislative department of the government of said city and county, and that said board is constituted of the persons named in the title of this petition.

VI. That on and during all the year 1878 this petitioner was, and ever since has been, and still is, engaged in the business of supplying water to the inhabitants of said city and county of San Francisco, and was and is the only corporation engaged in said business.

VII. That under and in pursuance of the provisions of section four of said "Act for the incorporation of water companies," in or about the month of January, 1878, the board of supervisors of the city and county of San Francisco appointed Isaac Friedlander and H. B. Williams, and this petitioner appointed W. F. Babcock and Chas. Webb Howard, and the four so appointed afterwards appointed Jerome Lincoln, to constitute a board of commissioners to determine the rates to be charged for water by this respondent, as provided in said section and act.

VIII. That the said board of commissioners so appointed duly organized, and fixed and determined a tariff of rates to be charged by this petitioner for water supplied to the inhabitants of said city and county for water supplied for family uses, to take effect on the first day of June, 1878, and remain in force for one year, and until new rates were established as provided in said act; a copy of which tariff is hereunto annexed, marked "Exhibit A," and made a part of this petition.

IX. That afterwards, and on or about the eleventh day of July, 1878, the said Isaac Friedlander died at said city and county, leaving a vacancy in said board among those appointed thereto by the said board of supervisors. That said board of supervisors has neglected and refused to fill such vacancy, although advised thereof, and the place of said Friedlander still remains vacant in said board, and the said board claims and pretends that under the constitution of the State it has become and is the duty of said board of supervisors themselves to fix the rates of compensation which this petitioner may charge for water supplied for domestic and other purposes, and that petitioner has no voice either in fixing such rates or in the selection of the board to fix the same.

X. That by reason of such vacancy the said board of commissioners believe that they are powerless to act in the premises, and have never attempted to establish new rates, as contemplated in said act.

XI. That this petitioner is desirous of having such schedule of rates revised and corrected and new rates established, and it is important and material to the interest of petitioner, as well as of its customers and consumers, that a new tariff of rates should be established as contemplated in said act.

And upon and according to its information and belief, petitioner avers and affiant states that it is not true, as pretended and claimed by said board of supervisors, that under the constitution or any other law

of this State the said board of supervisors has the right or possess the power to fix or regulate the rates which may be charged or collected by this petitioner for water supplied for any purpose whatever; but, on the contrary thereof, it was and is expressly provided in and by said section four of said "Act for the incorporation of water companies" that companies which should organize under the acts of the legislature mentioned in the first section of said act, for the purpose of supplying pure, fresh water to the inhabitants of any of the cities or towns of this State, should have the right to collect reasonable rates for water so supplied, and that the rates for water so supplied for family uses should be fixed and determined by a board of commissioners, two of whom should be selected by the city and county, city or town authorities, two by the water company, and in case the four could not agree upon the valuation, said four should choose a fifth person to be-
4 come a member of said board, and if they could not agree upon such fifth person, then such fifth member should be appointed by the sheriff of the county.

That this petitioner did organize in the manner, under the laws, and for the purpose mentioned in said act, and introduced water into said city and county under the provisions of said act, and accepted the provisions thereof, and the said provision as to the mode and manner of fixing said water-rates thereby became and was, and ever since has been, and still is, a contract between the people of this State and this petitioner, the obligation of which the State had and has no power to impair; that any attempt to confer upon the said board of supervisors the power to fix said rates and to deprive this petitioner of a voice in the selection of the persons or board authorized to fix the same would be and is unreasonable and unjust, and one impairing the obligation of said contract, and void, and that this petitioner is without remedy at law or other plain, speedy, or adequate remedy.

XII. That the question involved in this proceeding, namely, that of where the power rests of fixing such water-rates, is one of great public interest, and involves the validity of all water-rates in force, or claimed to be in force, in said city and county, and its speedy determination is necessary alike to the interests of said petitioner, of said city and county, and of all rate-payers therein. That the same question is involved incidentally, among others, in another case now pending in this court, and it is for that reason also believed to be better that this case should be brought originally here.

Wherefore your petitioner comes directly to this honorable court, and prays that the writ of mandate issue out of and under the seal of this honorable court, commanding the said board of supervisors to take action in the matter of filling and to fill the vacancy in said board of commissioners occasioned by the death of said Isaac Friedlander.

And your petitioner will ever pray, etc.

CHAS. WEBB HOWARD.

Subscribed and sworn to before me this 18th day of February, 1881.

[SEAL.] EDW'D CHATTIN,
Notary Public.

FOX & KELLOGG,
Att'ys for Petitioner.

5 EXHIBIT A.

SPRING VALLEY WATER WORKS.

The following are the monthly rates established by the water-rate

commissions appointed by law to fix the rates at which the Spring Valley Water Works shall charge for water for family uses:

JUNE 1ST, 1878.

Tariff of rates.

SECTION 1. For tenements occupied by a single family of not more than five persons:

Ground surface covered by tenement.	One story.	Two stories.	Three stories	Four stories.	Five stories.
600 to 700 square feet	$2 00	$2 00	$2 25	$2 50	$2 75
700 to 800 " "	2 00	2 25	2 50	2 75	3 00
800 to 900 " "	2 25	2 50	2 75	3 00	3 25
900 to 1,000 " "	2 50	2 75	3 00	3 25	3 50
1,000 to 1,200 " "	2 75	3 00	3 25	3 50	3 75
1,200 to 1,400 " "	3 00	3 25	3 50	3 75	4 00
1,400 to 1,600 " "	3 25	3 50	3 75	4 00	4 25
1,600 to 1,800 " "	3 50	3 75	4 00	4 25	4 50
1,800 to 2,000 " "	3 75	4 00	4 25	4 50	4 75
2,000 to 2,200 " "	4 00	4 25	4 50	4 75	5 00
2,200 to 2,400 " "	4 25	4 50	4 75	5 00	5 25
2,400 to 2,600 " "	4 50	4 75	5 00	5 25	5 50
2,600 to 2,800 " "	4 75	5 00	5 25	5 50	5 75
2,800 to 3,000 " "	5 00	5 25	5 50	5 75	6 00
3,000 to 3,200 " "	5 25	5 50	5 75	6 00	6 25
3,200 to 3,400 " "	5 50	5 75	6 00	6 25	6 50
3,400 to 3,600 " "	5 75	6 00	6 25	6 50	6 75
3,600 to 3,800 " "	6 00	6 25	6 50	6 75	7 00
3,800 to 4,000 " "	6 25	6 50	6 75	7 00	7 25

NOTE.—No single rate less than $2.00.

For all houses of one story in height, covering a greater area than four thousand square feet, there shall be added twenty-five cents for each 200 square feet, and for each additional story the further sum of twenty-five cents.

SEC. 2. Families of more than five persons shall be charged for each person above that number $0 25

SEC. 3. Bathing-tubs in private houses, for each tub 1 00

In public houses, boarding-houses, bathing establishments, and barber-shops, each 2 00

SEC. 5. For horses kept for private use, including water for washing one vehicle:

For one horse $1 00

Each additional horse 50

Each additional vehicle 1 00

SEC. 7. Hose for washing windows and sidewalks shall not have a nozzle larger than three-eight's of an inch, and for water used for this purpose a charge may be made in addition to that made for other uses of two cents per front foot of the premises.

6 SEC. 8. HOTELS, ETC.—Hotels, taverns, and boarding-houses, not including water for baths or for uses without the house, shall be charged for each bed for boarders and lodgers within the same, in addition to the rates for private families 25

For each day-boarder 20

SEC. 9. LODGING-HOUSES.—In addition to rate of family keep-

ing the house, for accommodation for each person within the same 20

SEC. 10. IRRIGATION.—For gardens and grounds not more than 25 square yards in area 25
From 25 to 50 square yards 50
From 50 to 75 " " 75
From 75 to 100 " " 1 00

All over 100 square yards, one cent per square yard.

SEC. 11. WATER-CLOSETS.—For each water-closet for use of public houses or of public buildings 2 00
For each water-closet for use of private dwellings 50

SEC. 13. Water furnished for any and all other purposes not embraced in the above will—

$1.00 per thousand gallons, provided the monthly bill shall not be less than five dollars.

$0.75 per thousand gallons, provided the monthly bill shall not be less than ten dollars.

$0.50 per thousand gallons, provided the monthly bill shall not be less than fifty dollars.

The company shall have power, in all cases, to apply meters for the purpose of discovering waste, and, when waste is found, to charge for the water so wasted at meter rates.

All water-rates are due and payable monthly in advance, and upon payment, as herein prescribed, the party shall be entitled to, and receive, a deduction of ten per cent.

I. FRIEDLANDER,
H. B. WILLIAMS,
JEROME LINCOLN,
W. F. BABCOCK,
CHARLES WEBB HOWARD,
Commissioners.

(Indorsed:) Filed February 18th, 1881. F. W. Gross, clerk, by J. B. Martin, deputy.

7 *Order for alternative writ of mandate.*

In the supreme court of the State of California.

SPRING VALLEY WATER WORKS, PETITIONERS, *vs.* A. SCHOTTER ET ALS., BEING THE BOARD OF supervisors of the city and county of San Francisco, resp'd't. } 7629.

Upon filing the affidavit and petition in this cause, let an alternative writ of mandate issue as prayed, returnable before the supreme court in banc, at the court-room thereof, in the city and county of San Francisco, on the fourth day of March, 1881, at 11 o'clock a. m.

Dated Feb'y 18, 1881.

MORRISON, *C. J.*
MYRICK, *J.*
THORNTON, *J.*
ROSS, *J.*

(Indorsed:) Filed February 18, 1881. F. W. Gross, clerk, by J. B. Martin, deputy clerk.

8 *Alternative writ of mandate.*

In the supreme court of the State of California.

SPRING VALLEY WATER WORKS, PETITIONER,
vs.
ANTONE SCHOTTLER, JOHN MASON, J. M. Litchfield, Samuel Drake, James D. Whitney, Frank Eastman, Hugh Fraser, Chas. L. Taylor, Micah Doane, Chas. A. Bayly, E. N. Torrey, and James B. Stetson, being and constituting the "board of supervisors of the city and county of San Francisco," respondent.

The people of the State of California to Antone Schottler, John Mason, J. M. Litchfield, Samuel Drake, James D. Whitney, Frank Eastman, Hugh Fraser, Chas. L. Taylor, Micah Doane, Chas. A. Bayly, E. N. Torry, and James B. Stetson, being and constituting the board of supervisors of the city and county of San Francisco, greeting:

Whereas the above-named petitioner heretofore, upon affidavit on that behalf filed in our supreme court, made application for a writ of mandate against you, setting forth in said affidavit and application—

I. That he is the president of the Spring Valley Water Works, the petitioner in this cause, and makes this affidavit and petition for and on behalf of said petitioner.

II. That said Spring Valley Water Works is a corporation organized and existing under the laws of the State of California, and having its office and principal place of business at the city and county of San Francisco, in said State, and is a party directly interested in and affected by the relief sought in this cause.

III. That said petitioner was organized on the nineteenth day of June, A. D. 1858, under and by virtue of a certain certificate of incorporation, certifying, among other things, that said corporation was formed "under and in conformity with the requirements of an act of the legislature of the State of California entitled 'An act to authorize George H. Ensign and other owners of the Spring Valley Water Works to lay down water-pipes in the public streets of the city and county of San Francisco,' passed April 23, 1858, and by virtue of an act of the legislature aforesaid entitled 'An act for the incorporation of water companies,' passed April 22, 1858, and in conformity with such other laws or parts of laws relating to the formation of corporations as are now in force in said State of California."

Also, that "the objects for which said company is formed is the introduction of pure, fresh water into the city and county of San Francisco, and into any part thereof, from any point or points, place or places, for the purpose of supplying the inhabitants of said city and county with the same, and to do and transact all such business relating thereto as may be necessary and proper; not, however, to be inconsistent with the laws and constitution of the State of California."

Which certificate of incorporation was filed in the office of the county clerk of the city and county of San Francisco, on the said nineteenth day of June, 1858, and a certified copy thereof filed in the office of the secretary of state of the State of California.

9 IV. That in and by section one of the act of the legislature of the State of California entitled "An act for the incorporation

of water companies," passed April 22, 1858, and referred to in said certificate of incorporation, it is provided as follows:

"The provisions of an act entitled 'An act to provide for the formation of corporations for certain purposes,' passed April 14th, 1853, and the provisions of 'An act to amend an act entited 'An act to provide for the formation of corporations for certain purposes,' passed April 14th, 1853, and passed on the 30th day of April, 1855, shall extend to and apply to all corporations already formed, or hereafter to be formed, under said acts, for the purpose of supplying any city and county, or any cities or towns, in this State, or the inhabitants thereof, with pure, fresh water."

V. That the city and county of San Francisco is, and at all times in this petition mentioned has been, a municipal corporation, organized and existing under the laws of said State, and the board of supervisors thereof, the respondent herein, was and is, and constituted and now constitutes, the municipal council and legislative department of the government of said city and county, and that said board is constituted of the persons named in the title of this petition.

VI. That on and during all the year 1878 this petitioner was, and ever since has been, and still is, engaged in the business of supplying water to the inhabitants of said city and county of San Francisco, and was and is the only corporation engaged in said business.

VII. That under and in pursuance of the provisions of section four of said "Act for the incorporation of water companies," in or about the month of January, 1878, the board of supervisors of the city and county of San Francisco appointed Isaac Friedlander and H. B. Williams, and this petitioner appointed W. F. Babcock and Chas. Webb Howard, and the four so appointed afterwards appointed Jerome Lincoln, to constitute a board of commissioners to determine the rates to be charged for water by this respondent, as provided in said section and act.

VIII. That the said board of commissioners so appointed duly organized, and fixed and determined a tariff of rates to be charged by this petitioner for water supplied to the inhabitants of said city and county for water supplied for family uses, to take effect on the first day of June, 1878, and remain in force for one year, and until new rates were established, as provided in said act; a copy of which tariff is hereunto annexed, marked "Exhibit A," and made a part of this petition.

IX. That afterwards, and on or about the eleventh day of July, 1878, the said Isaac Friedlander died at said city and county, leaving a vacancy in said board among those appointed thereto by the said board of supervisors. That said board of supervisors has neglected and refused to fill such vacancy, although advised thereof, and the place of said Friedlander still remains vacant in said board, and the said board claims and pretends that, under the constitution of the State, it has become, and is, the duty of said board of supervisors themselves to fix the rates or compensation which this petitioner may charge for water supplied for domestic and other purposes, and that petitioner has no voice either in fixing such rates or in the selection of the board to fix the same.

X. That by reason of such vacancy the said board of commissioners believe that they are powerless to act in the premises, and have never attempted to establish new rates, as contemplated in said act.

XI. That this petitioner is desirous of having such schedule of rates revised and corrected, and new rates established, and it is important and material to the interest of petitioner, as well as of its customers and con-

sumers, that a new tariff of rates should be established, as contemplated in said act.

And upon and according to its information and belief, petitioner avers and affiant states that it is not true, as pretended and claimed by said board of supervisors, that under the constitution or any other law of this State the said board of supervisors has the right or possess the power to fix or regulate the rates which may be charged or collected by this petitioner for water supplied for any purpose whatever; but, on the contrary thereof it was and is, expressly provided in and by said section four of said "Act for the incorporation of water companies" that companies which should organize under the acts of the legislature mentioned in the first section of said act, for the purpose of supplying pure, fresh water to the inhabitants of any of the cities or towns of this State, should have the right to collect reasonable rates for water so supplied, and that the rates for water so supplied for family uses should be fixed and determined by a board of commissioners, two of whom should be selected by the city and county, city or town authorities, two by the water company, and in case the four could not agree upon the valuation, said four should choose a fifth person to become a member of said board, and if they could not agree upon such fifth person, then such fifth member should be appointed by the sheriff of the county.

That this petitioner did organize in the manner, under the laws, and for the purpose mentioned in said act, and introduced water into said city and county under the provisions of said act, and accepted the provisions thereof; and the said provision as to the mode and manner of fixing said water-rates thereby became and was, and ever since has been, and still is, a contract between the people of this State and this petitioner, the obligation of which the State had and has no power to impair; that any attempt to confer upon the said board of supervisors the power to fix said rates and to deprive this petitioner of a voice in the selection of the persons or board authorized to fix the same would be and is unreasonable and unjust, and one impairing the obligation of said contract, and void, and that this petitioner is without remedy at law or other plain, speedy, or adequate remedy.

XII. That the question involved in this proceeding, namely, that of where the power rests of fixing such water-rates is one of great public interest, and involves the validity of all water-rates in force or claimed to be in force in said city and county, and its speedy determination is necessary alike to the interests of said petitioner, of said city and county, and of all rate-payers therein. That the same question is involved incidentally, among others, in another case now pending in this court, and it is for that reason also believed to be better that this case should be brought originally here.

And it appearing that it is proper that this writ should issue originally from this court:

Now, therefore, we do command you that, immediately after the receipt of this writ, you, the said board of supervisors of the city and county of San Francisco, take action in the matter of filling, and proceed to fill the vacancy in the board of water-rate commissioners appointed under and in pursuance of the "Act for the incorporation of water companies," approved April 22d, 1858, occasioned by the death of Isaac Friedlander; or that you show cause before this court in bank, in the court-room thereof, at No. 105 Stockton street, in the city and county of San Francisco, on the 4th day of March, 1881, at 11 o'clock a. m., why you have not done so.

Witness the Hon. Robert F. Morrison, chief justice of the supreme court, and the seal of said court, this 18th day of February, A. D. 1881.

[SEAL.]

F. W. GROSS, *Clerk*,
By J. B. MARTIN,
Deputy Clerk.

11 EXHIBIT A.

SPRING VALLEY WATER WORKS.

The following are the monthly rates established by the water-rate commissions appointed by law to fix the rates at which the Spring Valley Water-Works shall charge for water for family uses:

JUNE 1ST, 1878.

Tariff of rates.

SECTION 1. For tenements occupied by a single family of not more than five persons:

Ground surface covered by tenement.	One story.	Two stories.	Three stories.	Four stories.	Five stories.
600 to 700 square feet	$2 00	$2 00	$2 25	$2 50	$2 75
700 to 800 " "	2 00	2 25	2 50	2 75	3 00
800 to 900 " "	2 25	2 50	2 75	3 00	3 25
900 to 1,000 " "	2 50	2 75	3 00	3 25	3 50
1,000 to 1,200 " "	2 75	3 00	3 25	3 50	3 75
1,200 to 1,400 " "	3 00	3 25	3 50	3 75	4 00
1,400 to 1,600 " "	3 25	3 50	3 75	4 00	4 25
1,600 to 1,800 " "	3 50	3 75	4 00	4 25	4 50
1,800 to 2,000 " "	3 75	4 00	4 25	4 50	4 75
2,000 to 2,200 " "	4 00	4 25	4 50	4 75	5 00
2,200 to 2,400 " "	4 25	4 50	4 75	5 00	5 25
2,400 to 2,600 " "	4 50	4 75	5 00	5 25	5 50
2,600 to 2,800 " "	4 75	5 00	5 25	5 50	5 75
2,800 to 3,000 " "	5 00	5 25	5 50	5 75	6 00
3,000 to 3,200 " "	5 25	5 50	5 75	6 00	6 25
3,200 to 3,400 " "	5 50	5 75	6 00	6 25	6 50
3,400 to 3,600 " "	5 75	6 00	6 25	6 50	6 75
3,600 to 3,800 " "	6 00	6 25	6 50	6 75	7 00
3,800 to 4,000 " "	6 25	6 50	6 75	7 00	7 25

NOTE.—No single rate less than $2.00.

For all houses of one story in height, covering a greater area than four thousand square feet, there shall be added twenty-five cents for each 200 square feet, and for each additional story the further sum of twenty-five cents.

SEC. 2. Families of more than five persons shall be charged for each person above that number $0 25

SEC. 3. Bathing-tubs in private houses, for each tub 1 00

In public houses, boarding-houses, bathing establishments, and barber-shops, each 2 00

SEC. 5. For horses kept for private use, including water for washing one vehicle:

For one horse $1 00

Each additional horse 50

Each additional vehicle 1 00

SEC. 7. Hose for washing windows and sidewalks shall not have a

nozzle larger than three-eight's of an inch, and for water used for this purpose a charge may be made in addition to that made for other uses of two cents per front foot of the premises.

12 SEC. 8. HOTELS, ETC.—Hotels, taverns, and boarding-houses, not including water for baths or for uses without the house, shall be charged for each bed for boarders and lodgers within the same, in addition to the rates for private families. 25
For each day-boarder 20

SEC. 9. LODGING-HOUSES.—In addition to rate of family keeping the house, for accommodation for each person within the same 20

SEC. 10. IRRIGATION.—For gardens and grounds not more than 25 yards square in area 25
From 25 to 50 square yards 50
From 50 to 75 " " 75
From 75 to 100 " " 1 00

All over 100 square yards one cent per square yard.

SEC. 11. WATER-CLOSETS.—For each water-closet for use of public houses or of public buildings 2 00
For each water-closet for use of private dwellings 50

SEC. 13. Water furnished for any and all other purposes not embraced in the above will—

$1.00 per thousand gallons, provided the monthly bill shall not be less than five dollars.

$0.75 per thousand gallons, provided the monthly bill shall not be less than ten dollars.

$0.50 per thousand gallons, provided the monthly bill shall not be less than fifty dollars.

The company shall have power in all cases to apply meters for the purpose of discovering waste, and when waste is found to charge for the water so wasted at meter rates.

All water-rates are due and payable monthly in advance, and upon payment, as herein prescribed, the party shall be entitled to and receive a deduction of ten per cent.

I. FRIEDLANDER,
H. B. WILLIAMS,
JEROME LINCOLN,
W. F. BABCOCK,
CHARLES WEBB HOWARD,
Commissioners.

13 *Service of writ.*

SHERIFF'S OFFICE,
City and County of San Francisco:

I hereby certify that I received the annexed alternative writ of mandate on the 19th day of February, A. D. 1881, and personally served the same on the 19th day of February, 1881, upon John Mason, and on the 24th day of February, 1881, upon J. M. Litchfield, and on the 25th day of February, 1881, upon Samuel Drake, Frank Eastman, E. N. Torrey, James B. Stetson, Hugh Fraser, Antone Schottler, Micah Doane, C. L. Taylor, James D. Whitney, and Charles A. Bayly, all of the therein-named respondents and constituting the board of supervisors of the city and county of San Francisco, and on the 19th day of February, 1881, upon the honorable I. S. Kalloch, mayor and president of the honorable board of supervisors, and on the 26th day of February

1881, upon John A. Russell, clerk of the hon. board of supervisors, by delivering to and leaving with each of the above-named persons, personally, in the city and county of San Francisco, a copy of said alternative writ of mandate, and at the same time showing to them the annexed original, and informing them of the contents thereof.

Dated this 2nd day of March, 1881.

THOMAS DESMOND,
Sheriff,
By JOHN B. WALSH,
Deputy Sheriff.

(Indorsed:) Filed March 5th, 1881. F. W. Gross, clerk, by J. B. Martin, deputy.

14 *Demurrer to petition.*

In the supreme court, State of California.

SPRING VALLEY WATER WORKS, PETITIONER,
vs.
ANTONE SCHOTTLER ET AL., CONSTITUTING THE board of supervisors of the city and county of San Francisco, respondents. } 7629.

Comes now the said respondent, and says that the said petition does not state facts sufficient to entitle the said petitioner to the relief therein prayed for, nor to any relief whatsoever, and prays hence to be dismissed with costs, &c.

RHODES & BARSTOW,
Att'ys for Resp'ts.

(Indorsed:) Due service admitted of the within demurrer March 4, '81.

FOX & KELLOGG,
Attorneys for Petitioners.

(Indorsed:) Filed March 4, 1881. F. W. Gross, clerk, by J. B. Martin, deputy.

15 *Demurrer to petition.*

In the supreme court of the State of California.

SPRING VALLEY WATER WORKS, PETITIONERS,
vs.
ANTONE SCHOTTLER, JOHN MASON, J. M. LITCHfield, Samuel Drake, James D. Whitney, Frank Eastman, Hugh Fraser, Chas. L. Taylor, Micah Doane, Charles A. Bayly, E. N. Torry, and James B. Stetson, being and constituting the board of supervisors of the city and county of San Francisco, respondents. } 7629.

Now come the respondents above named, by John Luttrell Murphy, attorney and counselor for the city and county of San Francisco, and

attorney for said respondents, and demurs to the petition herein, and for cause of demurrer alleges:

That said petition does not state facts sufficient to constitute a cause of action, or to entitle the petitioner to the relief therein prayed for.

16

Wherefore respondents pray that the prayer of said petition be denied and that said petition be dismissed.

JOHN LUTTRELL MURPHY,
Attorney and Counselor.

(Indorsed:) Filed March 6, '81. Frank W. Gross, clerk, by C. Harlan, deputy.

17 *Opinion of the court in bank.*

In bank.

SPRING VALLEY WATER WORKS *vs.* THE BOARD OF SUPERVISORS OF SAN FRANCISCO. } No. 7629.—Filed June 6, 1881.

The Spring Valley Water Company was organized June 19, 1858, under an act of the legislature passed April 22, 1858.

Object of its incorporation was, according to its certificate of incorporation, "to introduce into the city and county of San Francisco pure, fresh water, for the purpose of furnishing it to the city and its inhabitants, and in connection therewith to transact all such business as might be necessary, proper, and consistent with the laws and constitution of the State of California."

In January, 1878—nearly 20 years after its incorporation—it seems to have availed itself of the provisions of section 4 of the act of its incorporation to appoint two commissioners, who, with two others appointed by the board of supervisors of the city and county, selected a fifth, and these constituted a board of commissioners, whose duty it was, under the act of incorporation, to fix the rates to be charged by the company for water supplied to consumers. After its organization the board fixed a tariff of rates, to take effect June 1, 1878, and to remain in force for one year, and until new rates were established.

In July, 1878, a vacancy occurred in the board by the death of one of its members who had been appointed by the board of supervisors. The vacancy has never been filled, and now—nearly three years after the vacancy occurred—the company applies for a writ of mandate to compel the board of supervisors to appoint a new commissioner.

Mandamus lies only when there is a clear legal right to have a specific thing done by a public tribunal or officer upon whom the law has imposed the duty of doing it. Under its charter the company had a right to have water-rates fixed by a board of commissioners, and the duty of appointing two of them was imposed by the law upon the board of supervisors. But the law which imposed that duty was changed by section 1 of article XIV of the constitution, which provides that "the rates of compensation to be collected by any person, company, or corporation in this State for the use of water supplied to any city and county or city or town, or the inhabitants thereof, shall be fixed annually by the board of supervisors, or city and county, or city or town council, or other governing body of such city and county,

or city or town, by ordinance or otherwise, in the manner that other ordinances or legislative acts or resolutions are passed by such body, and shall continue in force for one year and no longer." And by section 1, article XXII, of the constitution it was ordained "that the provisions of all laws which are inconsistent with this constitution shall cease upon the adoption thereof, except that all laws which are inconsistent with such provisions of the constitution as require legislation to enforce them shall remain in full force until July 1, 1880, unless sooner altered or repealed by the legislature."

Section 1, article XIV, of the constitution has been enforced by appropriate legislation. It has, therefore, struck null that provision of section 4 of the act under which the company organized for the appointment of commissioners and the determination of water-rates by the board of such commissioners. Water rates must be fixed by the board of supervisors pursuant to the provisions of the act of 1881, and not by a board of commissioners appointed under the act of 1858, unless it be that the first section of article XIV of the constitution contravenes the tenth section of article I of the Constitution of the United States, which prohibits a State from impairing the obligation of a contract, and that is the ground taken by the company.

The act of 1858, under which the company organized, is its charter, and it may be conceded that the charter of a corporation, when accepted by the corporators, is a contract between them and the State that the powers, privileges, and franchises granted shall not be restrained, controlled, or destroyed without their consent. (Dartmouth College Case, 4th Wheat., 709; Pennsylvania College Cases, 13 Wall., 709.) That must be so, unless it has been otherwise provided in the contract itself. But the company obtained its charter under a section of the constitution of 1849 which authorized the formation of corporations under general laws, and reserved to the State the power of altering such laws from time to time, or repealing them. As part of the organic law of the State, this provision entered into the contract between the company and the State, and when the corporation accepted the charter of the company, under the general law of 1858, they consented to take it, subject to the exercise of the powers reserved by the State. As a creature of the State, it was bound by any laws passed by its creator in the exercise of powers, inherent or reserved. "But," as has been said by the Supreme Court of the United States, "the power of alteration and amendment is not without limit; the alterations must be reasonable; they must be made in good faith, and be consistent with the scope and object of the act of incorporation. Sheer oppression and wrong cannot be inflicted under the guise of amendment or alteration. Beyond the sphere of the reserved powers the vested rights of property of corporations, in such cases, are surrounded by the same sanctions and are as inviolable as in other cases." (Shields vs. Ohio, 95 U. S., 325.)

The question therefore remains, whether, in ordaining that the board of supervisors shall annually fix the rates to be charged by the company for water furnished to consumers, the State has in any way impaired the chartered of the corporation or destroyed or impaired any vested right of property acquired under it.

By the charter there was granted to the company the right or franchise of distributing water through its pipes or mains to any part of the city, and selling it to consumers at prices to be fixed by public agents. Assuming that non-interference with the rights of the grant, or of property acquired under it, and the appointment of agents to establish the rates between the company and the public, were obli-

gations which were binding upon the State, and that the company, on its part, came under an obligation to furnish water to the city of San Francisco, in case of great necessity, "free of charge," and to the inhabitants thereof, at prices to be established by public agents, there was such a contract between the company and the State as could not be violated by either of the parties to it. But it will be observed that neither the power of fixing water-rates nor of appointing the agents for that purpose was granted to the company. If it was within the power of the State to delegate either of those powers to a corporation or individual, it was not done by any of the laws under which the company was incorporated. A privilege was given to the company to participate, to a certain extent, in the selection of the agents who were to constitute the board for determining the rates; but the privilege was subordinate to the powers reserved by the State for regulating, between the corporation and the public, the use of water furnished to the public, by the appointment of agents to fix the rates to be charged for it, and the company, under its contract with the State, held the privilege subject at all times to any laws which might be passed by the State in the exercise of its powers of regulation and appointment. Such powers were not granted to the company. They could not have been granted. As governmental powers, it was not in the power of the legislature to bargain them away to corporations or individuals. "Such powers," says Mr. Greenleaf in his edition of "Cruise on Real Property," vol. 2, p. 67, "are intrusted to the legislature to be exercised, not to be bartered away; and it is indispensable that each legislature should assemble with the same measure of sovereign power which was held by its predecessors. Any act of the legislature disabling itself from the future exercise of powers intrusted to it for the public good must be void, being in effect a covenant to desert its paramount duty to the whole people."

In exercising the powers of regulating the use of property of a corporation which has been devoted to public use, and the appointment of agents for the performance of a duty between the corporation and the public, the State may allow the corporation to participate in the selection of the agents, or it may select any of the corporators of the corporation to act in connection with other agents. But in so doing it does it ex mera gratia. By making such appointments the State does not incur any obligation to continue them, nor the mode of appointing agents. It may change the mode by which appointments shall be made. It may discharge at any time those who have been appointed, and appoint others in any mode it sees fit. The power of the State over its agents or officers is unlimited, except by constitutional limitations. In the absence of any constitutional prohibition or affirmative provision fixing the term of office of any officer, or his compensation, the legislature may change such term or compensation even while the officer is in office. (People vs. Dickenson, 27 Cal., 470; In re Bulger, 45 id., 553.)

Changing the agents by which a thing is to be done, which a corporation is entitled to have done, does not interfere with the enjoyment of the right itself. The right still exists, and is recognized and protected by law, although a different agency may be appointed for the performance of the duty upon which the right rests. The change in the agency does not diminish the duty nor impair the right. In the constitutional amendment there was therefore no diminution of the duty assumed by the State and no interference with the rights of the company under its charter. A privilege of participating in the selection of agents for the performance of a public duty between it and the public has been taken

away; but that privilege was in no sense a part of the contract between it and the State. The State was not under any obligation to continue it or to make it co-existent with the grant of the charter. As a mere privilege, the company held it subject to the retained powers of the State, in the exercise of which it was liable at any time to be modified or annulled. By the constitutional amendment the State has annulled it; but in doing so it has not interfered with the charter of the company or disturbed any rights of property acquired under it, or obstructed the company in the enjoyment of any of those rights. The rights and duties of the company and of the State arising out of the charter are left intact and unimpaired. No property, tangible or intangible, of the company has been interfered with. The water which it is engaged as a business in selling to the public is regarded and protected by law as its property; but, as property which has been devoted to the use of the public, it is subject to the regulation and control of the State, and the State,
18 while it has sanctioned the use, has a duty to discharge to the public by regulating the use as well as the powers and privileges of the corporation incidental to the use. These things are not of the contract; they appertain to the sovereignty of the State, and cannot be bargained away. "All property," says Mr. Chief Justice Waite, "which is affected with a public interest ceases to be a juris privati only, and becomes subject to regulation for the public benefit; and property is affected with a public interest whenever it is devoted to such use as to make it of public consequence and to directly affect the community at large." (Munn vs. Illinois 94 U. S., 126.)

It is this use of property invested in a public business, and the powers and duties of a corporation incidental to it, which in its relations to the public are always subject to the regulation of the State. Every corporation, when its accepts its charter, consents to this regulation by the State; and the power of the State to regulate the use may be exercised to almost any extent to carry into effect the original purposes of the grant and to protect the rights of the public and of the corporators, or to promote due administration of the affairs of the corporation. (Miller vs. The State, 15 Wallace, 311; Holyoke Water Company vs. Lyman, id., 511.)

Whence it results that, when the State, by the constitutional amendment of 1879, took away from the petitioner the privilege of participating in the selection of public agents to perform the duty under its charter of fixing water-rates between it and the public, it did not interfere with any of the vested rights of the company, and the exercise of its power in that respect cannot be regarded as an unconstitutional act within the prohibition of the Federal Constitution.

The application of the petitioner is therefore denied.

McKEE, *J.*

I concur.

SHARPSTEIN, *J.*

CONCURRING OPINIONS.

I concur in the judgment. I also concur in the views of Mr. Justice McKee, except as to what is said regarding the power of the State, independent of the provisions of the State constitution, to restrain or control franchises granted to corporations without their consent, and as to the grant of a franchise constituting a contract; upon those subjects I express no opinion.

MYRICK, *J.*

duties and obligations therein prescribed. Among those rights and privileges was given the power to acquire, by condemnation, property necessary for the use of such corporations, and the right, subject to the reasonable direction of the board of supervisors or city or town authorities as to the mode and manner of exercising such right, to use so much of the streets, ways, and alleys in any town, city, or city and county, or on any public road therein, as should be necessary for laying pipes for conducting water, etc.

The fourth section, which is the one most material to be considered in this case, provided: "All corporations formed under the provisions of this act, or claiming any of the privileges of the same, shall furnish pure, fresh water to the inhabitants of such city and county or city or town for family uses, so long as the supply permits, at reasonable rates and without distinction of persons, upon proper demand therefor, and shall furnish water to the extent of their means to such city and county or city or town, in case of fire or other great necessity, free of charge. And the rates to be charged for water shall be determined by a board of commissioners, to be selected as follows: Two by such city and county or city or town authorities and two by the water company; and in case that four cannot agree to the valuation, then, in that case, the four shall choose a fifth person, and he shall become a member of said board; if the four commissioners cannot agree upon a fifth, then the sheriff of the county shall appoint such fifth person. The decision of a majority of said board shall determine the rates to be charged for water for one year, and until new rates shall be established. The board of supervisors, or the proper city or town authorities, may prescribe such other proper rules relating to the delivery of water, not inconsistent with this act and the laws and constitution of this State."

By incorporating and availing itself of the privileges of this act, the Spring Valley Water Company became bound, among other things, to furnish water to the extent of its means to the city and county of San Francisco, in case of fire or other great necessity, free of charge, and it has already been determined by this court that the words "other great necessity" include all water necessary for sprinkling streets, watering public squares and parks, for flushing sewers, and for all like purposes beneficial to the public. But why was the company bound to furnish its water for such purposes free of charge? Simply because by accepting the offer held out by the act of 1858, and incorporating and availing itself of its privileges, it agreed—contracted—to do so, and was bound by the terms of the contract. By the exercise of no governmental power of which I am aware could the Spring Valley Water Works be compelled to furnish the city and county of San Francisco with water free of charge for any purpose. That obligation could, and did, only arise out of the contract. But the contract did not end there; for by it the company also bound itself and became entitled to furnish pure, fresh water to such of the inhabitants of the city and county as should wish to take it, so long as the supply should permit, for family uses, at reasonable rates, and without distinction of persons, upon proper demand therefor—the rates to be charged for water so furnished to be fixed, however, in the manner specified in the act. This right was a part, and the principal part, of the consideration the company received for its agreement to furnish the city and county with water for the purposes mentioned free of charge.

19 The manner of fixing the rates was as much a part of the agreement between the company and the State as was the agreement to furnish the public water for certain purposes free of charge. Both,

as I understand it, rested upon contract, and upon contract alone—the one as much as the other, and both relating to property rights—to the terms upon which the company should sell and dispose of the water it owned.

But it is said that the manner of fixing the rates to be charged by the company for water furnished the inhabitants of the city and county, prescribed by the act of 1858, has been changed by section 1 of article XIV of the new constitution, which is in these words:

"The use of all water now appropriated, or that may be hereafter appropriated, for sale, rental, or distribution, is hereby declared to be a public use and subject to the control of the State in the manner prescribed by law; provided, that the rates or compensation to be collected by any person, company, or corporation in this State for the use of water supplied to any city and county, or city or town, or the inhabitants thereof, shall be fixed annually by the board of supervisors, or city and county, or city or town council, or other governing body of such city and county, or city or town, by ordinance or otherwise, in the manner that other ordinances or legislative acts or resolutions are passed by such body, and shall continue in force for one year and no longer. Such ordinances or resolutions shall be passed in the month of February of each year, and shall take effect on the first day of July thereafter. Any board or body failing to pass the necessary ordinances or resolutions fixing water-rates where necessary, within such time, shall be subject to peremptory process to compel action at the suit of any party interested, and shall be liable to such other processes and penalties as the legislature may prescribe. Any person, company, or corporation collecting water-rates in any city and county, or city or town, in this State, otherwise than as so established, shall forfeit the franchise and water-works of such person, company, or corporation to the city and county, or city or town, where the same are collected for the public use."

If, as is said in the prevailing opinion, the provisions of this section of the new constitution have struck null the provisions of the act of 1858 relating to the fixing of the rates to be charged for water furnished the inhabitants of the city and county, I am unable to see why it has not also struck null those provisions of that act requiring the company to furnish the city and county with water for the purposes therein mentioned free of charge. The one is as much a part of the contract between the State and the company as the other. If there was a contract between the State and the company at all (and I understand the prevailing opinion to proceed upon the theory that there was), I know of no ground for saying that the clause relating to the fixing of rates to be charged for the water furnished by the company to the inhabitants of the city and county was not a part of that contract. In my opinion it was a most material part of it, providing as it did for fixing the amount of money the company should receive for its water.

If the above-cited provision of the new constitution affects this contract at all, I see no escape from the conclusion that the Spring Valley Company is thereby relieved from the necessity of furnishing the city and county with any water for any purpose free of charge; because if the contract relating to the furnishing of water by the company is vitiated in part, it is vitiated altogether, and because the constitution declares "that the rates of compensation to be collected by any person, company, or corporation in this State for the use of water supplied to any city and county, or city or town, or to the inhabitants thereof, shall be fixed annually, by the board of supervisors, or city and county or

city or town council, or other governing body of such city and county, or city or town, by ordinance or otherwise, in the manner that other ordinances or legislative acts or resolutions are passed by such body, and shall continue in force for one year and no longer." There is in this provision no exception of any character, but its language is general and sweeping. In my opinion, however, this provision of the constitution does not in any way affect the contract by which the Spring Valley Water Works bound itself to furnish the city and county of San Francisco with water for certain purposes, free of charge, and by which it became entitled to have the rates to be charged for water furnished the inhabitants of the city and county fixed as prescribed in the act of 1858, for the reason that it is one of those relating to property rights—to the amount the company should be paid for the property it owned—and therefore comes within the protection of that clause of the Constitution of the United States that prohibits States from passing laws impairing the obligation of contracts. The ground upon which it is sought to make the provisions of the present constitution apply to, and consequently control, the provisions of the act of 1858 in the particular mentioned is that at the time that act was adopted, and at the time the Spring Valley Water Works incorporated, there was a provision in the then existing constitution providing that "corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes. All general laws and special acts passed pursuant to this section may be altered from time to time, or repealed," and that by reason of the power thus reserved to the State it was competent for the law-making power to alter, amend, or repeal the provision in question here.

No one, I presume, will dispute the general proposition that the charter of a corporation is subject to the reserved power in the State to alter or amend or repeal at any time any of its provisions, subject to the limitation, however, that such alteration or amendment must be reasonable and consistent with the scope and object of the act of incorporation. (Shields vs. Ohio, 95 U. S., 325; Sinking Fund Cases, 99 U. S., 720.) Nor the proposition that one legislature cannot irrevocably bargain away any of its governmental powers, such, for example, as the right of eminent domain provided for in the second section of the act of 1858. On the other hand, it is just as clear that the legislature may contract with a private corporation concerning the property of such corporation, and that such a contract may be contained in the charter of the corporation, and when made becomes a vested right and beyond the reach of subsequent legislation. (Stone vs. Mississippi, 101 U. S., 817, 820; Cooley's Const. Lim., 4th ed., p. 347; Commonwealth vs. Essex Co., 13 Gray, 253; Sage vs. Dillard, 15 B. Munroe, Ky., 349.) Of this latter character, in my opinion, was the contract before us in the present case. Therefore, in my view, it becomes unnecessary to inquire whether a change in the provision of the act of 1858, securing to the water company reasonable rates for water furnished the inhabitants of the city and county, to be fixed by a commission, in the appointment of which the company should have a voice to such rates as the "board of supervisors * * * or other governing body of such city and county" should fix (without limitation or qualification), and coupled with the condition that if the company should collect any water-rates otherwise than as so established, it should forfeit its franchise and water-works—its reservoirs and pipes and water—to the city and county for the use of the public, would be a reasonable amendment to the law and so permissible under the reserved power of the State. It seems to me it would

be stretching the reserved power almost, if not quite, beyond limit, if this can be done. However, it is not necessary in my view of the case, to express any opinion upon that question. For the reasons already stated, I am constrained to dissent from the judgment of my associates.

I think the petitioner entitled to the writ prayed for, and that it ought to be granted.

ROSS, *J.*

20 In the supreme court of the State of California.

Judgment of the court in bank, June 6th, 1881.

SPRING VALLEY WATER WORKS, PETITIONER,
vs.
BOARD OF SUPERVISORS CITY AND COUNTY of San Francisco, respondent.
No. 7629. Petition for writ of mandate.

And now, at this day, this cause being called, and having been heretofore submitted and taken under advisement by the court, and all and singular the law and premises being by the court here seen, heard, understood, and fully considered, the opinion of the court herein is delivered by McKee, J.; "I concur," Sharpstein, J.; special concurring, Myrick, J., Thornton, J.; "I dissent," Ross, J. Whereupon it is now considered, ordered, adjudged, and decreed by the court here that the application of the petitioner for a peremptory writ of mandate in the above-entitled cause be, and the same is hereby, denied.

21 *Bond on writ of error.*

In the Supreme Court of the United States.

SPRING VALLEY WATER WORKS, PLAINTIFF in error,
vs.
ANTONE SCHOTTLER AND OTHERS, BEING AND constituting the board of supervisors of the city and county of San Francisco, State of California, defendant in error.

Know all men by these presents that we, the Spring Valley Water Works, as principal, William Sharon and Herman Schussler, as sureties, are held and firmly bound unto Antone Schottler, John Mason, J.
22 M. Litchfield, Samuel Drake, James D. Whitney, Frank Eastman, Hugh Fraser, Charles L. Taylor, Micah Doane, Charles A. Bayly, E. N. Torry, and James B. Stetson, being and constituting the board of supervisors of the city and county of San Francisco, State of California, defendant in error, in the above-entitled suit, in the sum of one thousand dollars, lawful money of the United States of America, to be paid to the said Antone Schottler, John Mason, J. M. Litchfield Samuel Drake, James D. Whitney, Frank Eastman, Hugh Fraser, Charles L. Taylor, Micah Doane, Charles A. Bayly, E. N. Torry, and James B. Stetson, being and constituting the "board of supervisors of the city and county of San Francisco," State of California, their successor or successors, to the payment of which sum well and truly to be made we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, dated this fifth day of August, A. D. 1881.

Whereas the above-named Spring Valley Water Works has
23 prosecuted a writ of error to the Supreme Court of the United

States to reverse the judgment rendered by the supreme court of the State of California in the cause entitled number 7629, "Spring Valley Water Works, petitioner, versus Antone Schottler, John Mason, J. M. Litchfield, Samuel Drake, James D. Whitney, Frank Eastman, Hugh Fraser, Charles L. Taylor, Micah Doane, Charles A. Bayly, E. N. Torry, and James B. Stetson, being and constituting the board of supervisors of the city and county of San Francisco," State of California:

Now, therefore, the condition of this obligation is such that if the above-named Spring Valley Water Works, plaintiff in error, shall prosecute its said writ of error to effect, and answer all costs if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

WM. SHARON. [SEAL.]
H. SCHUSSLER. [SEAL.]
SPRING VALLEY WATER WORKS,
By WILL. BROOKS, *Ass't Secretary.* [SEAL.]

Signed, sealed, and delivered in presence of—
EDWARD CHATTIN

24 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

William Sharon and H. Schussler, being duly sworn, each for himself deposes and says that he is a householder in said State, and is worth the sum of one thousand dollars, lawful money of the United States of America, exclusive of property exempt from execution, and over and above all his just debts and liabilities.

WM. SHARON.
H. SCHUSSLER.

Subscribed and sworn to before me this 5th day of August, A. D. 1881.

[NOTARIAL SEAL.] EDWARD CHATTIN.
Notary Public.

(Indorsed:)
I approve both the form of the within bond and the sufficiency of the sureties thereon.
Dated August 5th, A. D. 1881.

R. F. MORRISON,
Chief Justice of the Supreme Court of the State of California.

(Indorsed:) Filed August 5th, '81. F. W. Gross, clerk, by C. Harlan, deputy.

25 *Writ of error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the justices of the supreme court of the State of California, greeting:

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which is in the said supreme court before you, being the highest court of the said State in which a decision could be had in the suit entitled Spring Valley Water Works, petitioner and plaintiff in error, versus Antone Schottler, John Mason, J. M. Litchfield, Samuel Drake, James D. Whitney, Frank Eastman, Hugh Fraser, Charles L. Taylor, Micah Doane, Charles A. Bayly, E. N. Torrey, and James B. Stetson, being and constituting the "board of supervisors of

the city and county of San Francisco" (State of California), respondent and defendant in error, wherein was drawn in question the validity of a statute of the State of California, on the ground of its being repugnant to the Constitution of the United States, and the decision of said supreme court was in favor of its validity, and where a title, right, privilege, and immunity was claimed under the Constitution of
26 the United States, and the decision was against the title, right, privilege, and immunity specially set up and claimed under the Constitution of the United States by said Spring Valley Water Works, petitioner, a manifest error hath happened, to the great damage of the said Spring Valley Water Works, as by its complaint appears, and it being fit that the error, if and there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, in the District of Columbia, on the second Monday of October next, in the said Supreme Court of the United States to be there and then held, that, the record and proceedings aforesaid be' inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the
27 Supreme Court of the United States, this 5th day of August, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States of America the one hundred and sixth.

[SEAL.]

L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE,
Deputy Clerk.

The above writ of error is hereby allowed.

R. F. MORRISON,
Chief Justice of the Supreme Court
of the State of California.

28 The answer of the justices of the supreme court of the State of California.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said court to the Supreme Court of the United States within mentioned, at the day and place within contained in a certain schedule to this writ annexed, as within we are commanded.

By the court.

, *Clerk.*

(Indorsed:) United States Supreme Court. Spring Valley Water Works, pl'ff in error, vs. Antone Schottler et al., board of supervisors of the city and county of San Francisco, &c., def't in error. Writ of error. Filed August 5, '81. F. W. Gross, clerk, by C. Harlan, deputy.